

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of }

4 } MUR 5197

5 National Republican Senatorial }
6 Committee and Stan Huckaby, }
7 as treasurer }

8
9 **CONCILIATION AGREEMENT**

10 This matter was initiated by a signed, sworn, and notarized complaint by John
11 Berthoud, President of the National Taxpayers Union, and on the basis of information
12 ascertained by the Federal Election Commission ("the Commission") in the normal course
13 of carrying out its supervisory responsibilities. The Commission found reason to believe
14 that the National Republican Senatorial Committee and Stan Huckaby, as treasurer,
15 ("Respondents") violated 2 U.S.C. § 441b(a).

16 NOW, THEREFORE, the Commission and the Respondents, having participated in
17 informal methods of conciliation, prior to a finding of probable cause to believe, do hereby
18 agree as follows:

19 I. The Commission has jurisdiction over the Respondents and the subject matter of
20 this proceeding, and this agreement has the effect of an agreement entered pursuant to 2
21 U.S.C. § 437g(a)(4)(A)(i).

22 II. Respondents have had a reasonable opportunity to demonstrate that no action
23 should be taken in this matter.

24 III. Respondents enter voluntarily into this agreement with the Commission.

25 IV. The pertinent facts in this matter are as follows¹:

¹ All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Commission Act of 1971, as amended, (the "Act") herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations,

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26 1. The National Republican Senatorial Committee is a political committee within the
27 meaning of 2 U.S.C. § 431(4).

28 2. Stan Huckaby is the treasurer of the National Republican Senatorial Committee.

29 3. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits
30 "any corporation organized by authority of any law of Congress" from making "a
31 contribution or expenditure in connection with any election to any political office." 2 U.S.C.
32 § 441b(a). The Act also prohibits "any candidate, political committee, or other person" from
33 knowingly accepting or receiving "any contribution prohibited by this section." *Id.* The
34 Federal Home Loan Mortgage Corporation ("Freddie Mac") is a corporation organized by
35 authority of a law of Congress. 12 U.S.C. § 1451 *et seq.*

36 4. For purposes of Section 441b, the terms "contribution" and "expenditure" include
37 "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any
38 services, or anything of value...to any candidate, campaign committee, or political party or
39 organization, in connection with any election to any of the offices referred to in" Section
40 441b.

41 5. The Act excludes from the definition of contribution:

42 any gift, subscription, loan, advance, or deposit of money or anything of
43 value to a national or a State committee of a political party specifically
44 designated to defray any cost for construction or purchase of an office
45 facility not acquired for the purpose of influencing the election of any
46 candidate in any particular election for Federal office.

47
48 2 U.S.C. § 431(8)(B)(viii). This is the so called "building fund exemption." *See, e.g.* Advisory
49 Opinions 2001-12, 2001-1, 1998-8, 1997-14, and 1983-8. Funds falling under the building
50 fund exemption are not exempt from the prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. §

which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA on the regulations thereunder.

24-04-407-0368

24-04-407-0360
51 114.1(a)(2)(ix); Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and
52 1979-17. Therefore, national and state committees of political parties may accept donations
53 covered by the building fund exemption from corporations organized by authority of any
54 law of Congress. *See id.*

55 6. Two donations from Freddie Mac—a \$100,000 donation received on October 14,
56 1999 and a \$30,000 donation dated July 17, 2000—were improperly deposited by
57 Respondents into the National Republican Senatorial Committee's non-federal account for
58 use in offsetting compliance costs, such as legal and accounting expenses. Respondents also
59 improperly deposited one additional Freddie Mac check into that account—a \$250 donation
60 received on July 18, 2000—for the same purpose.

61 7. Respondents returned \$130,000 to Freddie Mac on July 11, 2001

62 8. Respondents returned \$250 to Freddie Mac on July 2, 2003.

63 V. Respondents deposited \$130,250 from the Federal Home Loan Mortgage
64 Corporation into the National Republican Senatorial Committee's non-building fund
65 account, in violation of 2 U.S.C. § 441b(a). Respondents will cease and desist from violating
66 2 U.S.C. § 441b(a).

67 VI. Respondents will pay a civil penalty to the Federal Election Commission in the
68 amount of Twenty-Four Thousand dollars (\$24,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

69 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
70 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review
71 compliance with this agreement. If the Commission believes that this agreement, or any
72 requirement thereof, has been violated it may institute a civil action for relief in the United
73 States District Court of the District of Columbia.

24-04-407-0370

74 VIII. This agreement shall become effective as of the date that all parties hereto
75 have executed same and the Commission has approved the entire agreement.

76 IX. Respondents shall have no more than 30 days from the date this agreement
77 becomes effective to comply with and implement the requirements contained in this
78 agreement and to so notify the Commission.

79 X. This Conciliation Agreement constitutes the entire agreement between the parties
80 on the matters raised herein, and no other statement, promise, or agreement, either written
81 or oral, made by either party or by agents of either party, that is not contained in this written
82 agreement shall be enforceable.

83
84 FOR THE COMMISSION:

85 Lawrence H. Norton
86 General Counsel
87

88
89 BY: Rhonda J. Vosdingh
90 Rhonda J. Vosdingh
91 Associate Counsel
92 for Enforcement
93

2/18/04
Date

94
95 FOR THE RESPONDENTS:

96
97 Benjamin L. Ginsberg
98 Benjamin L. Ginsberg
99
100
101

8-25-03
Date